UNITED STATES SENTENCING COMMISSION

AMENDMENT 783

Section 2D1.1(b) is amended by redesignating paragraphs (14) through (16) as paragraphs (15) through (17), respectively; and by inserting after paragraph (13) the following new paragraph (14):

> "(14) If (A) the offense involved the cultivation of marihuana on state or federal land or while trespassing on tribal or private land; and (B) the defendant receives an adjustment under §3B1.1 (Aggravating Role), increase by 2 levels.".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 16 by striking "(b)(14)(D)" and inserting "(b)(15)(D)"; by redesignating Notes 19 through 26 as Notes 20 through 27, respectively; and by inserting after Note 18 the following new Note 19:

> "19. *Application of Subsection (b)(14)*.—Subsection (b)(14) applies to offenses that involve the cultivation of marihuana on state or federal land or while trespassing on tribal or private land. Such offenses interfere with the ability of others to safely access and use the area and also pose or risk a range of other harms, such as harms to the environment.

term appears and inserting "(b)(15)(B)";

in Note 20(B) (as so redesignated) by striking "(b)(14)(C)" each place such term appears and inserting "(b)(15)(C)";

in Note 20(C) (as so redesignated) by striking "(b)(14)(E)" both places such term appears and inserting "(b)(15)(E)"; and

in Note 21 (as so redesignated) by striking "(b)(16)" each place such term appears and inserting "(b)(17)".

The Commentary to §2D1.1 captioned "Background" is amended by striking "(b)(14)" and inserting "(b)(15)"; and by striking "(b)(15)" and inserting "(b)(16)".

Section 2D1.14(a)(1) is amended by striking "(b)(16)" and inserting "(b)(17)".

The Commentary to §3B1.4 captioned "Application Notes" is amended in Note 2 by striking "(b)(14)(B)" and inserting "(b)(15)(B)".

The Commentary to §3C1.1 captioned "Application Notes" is amended in Note 7 by striking "(b)(14)(D)" and inserting "(b)(15)(D)".

Reason for Amendment: This amendment provides increased punishment for certain defendants involved in marihuana cultivation operations on state or federal land or while trespassing on tribal or private land. The amendment adds a new specific offense characteristic at subsection (b)(14) of §2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy). The new specific offense characteristic provides an increase of two levels if the defendant receives an adjustment under §3B1.1 (Aggravating Role) and the offense involved the cultivation of marihuana on state or federal land or while trespassing on tribal or private land.

The amendment responds to concerns raised by federal and local elected officials, law enforcement groups, trade groups, environmental advocacy groups

private land without the owner's permission, the operation deprives the public or the owner of lawful access to and use of the land.

Accordingly, this amendment provides an increase of two levels when a marihuana cultivation operation is located on state or federal land or while trespassing on tribal or private land, but only applies to defendants who received an adjustment under §3B1.1 (Aggravating Role). These defendants are more culpable and have greater decision-making authority in the operation. The amendment also adds commentary in §2D1.1 at Application Note 19 clarifying that, consistent with ordinary guideline operation, the new increase may be applied cumulatively with the existing enhancement at subsection (b)(13)(A) of §2D1.1, which applies if an offense involved certain conduct relating to hazardous or toxic substances or waste.

Effective Date: The effective date of this amendment is November 1, 2014.